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Case claiming antitrust manipulation of Bitcoin Cash network falls short, for now

By **Alison Frankel**

February 6, 2020 6:09 PM EST · Updated February 6, 2020



(Reuters) - The telecom company United American Corp alleged a breathtaking conspiracy to rig the market for Bitcoin Cash in a complaint filed in federal court in Miami in 2018. But in an order this week, incorporating her reasoning from a Jan. 28 hearing, U.S. Magistrate Judge Chris McAliley said UnitedCorp's lawyers at Akerman still have a long way to go to make a case. The judge dismissed the case without prejudice, giving the company until Feb. 28 to file an amended complaint but warning that she doesn't yet see how the alleged scheme impeded competition.

UnitedCorp CEO Benoit Laliberte told me the company fully intends to accept Judge McAliley's invitation to address her concerns. "This industry needs the U.S. justice system to start applying laws," he said.

The company, represented by Akerman, claims that an international coalition - Chinese cryptocurrency mining hardware specialists, crypto software developers, a Tokyo-based Bitcoin investor and the operator of a well-known Bitcoin exchange - conspired to "hijack" the Bitcoin Cash network. UnitedCorp had invested heavily in 2017 in both hardware and software to run data centers mining for Bitcoin Cash. In 2018, the Bitcoin Cash network was scheduled for an upgrade. The crypto community referred to the upgrade as a "hard fork": The protocols, or "node" that UnitedCorp (and many other miners) used were not compatible with another widely used node for mining Bitcoin Cash. Under the guiding principle of cryptocurrency and blockchain - which relies on the theory that decentralization prevents corruption of the market - data miners were to pick their preferred node for the network upgrade, allowing the community to decide the future of the network.

But according to UnitedCorp's complaint, the defendants rigged the process. The company claimed that Bitcoin investor Roger Ver and his company Bitcoin.com "rented" Chinese servers to tilt the competition. The suit additionally alleged that cryptocurrency developers then set up "checkpoints" to

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lock in that preferred node, preventing other users from controlling the Bitcoin Cash blockchain, or virtual ledger, and averting future “hard fork” upgrades. To cap off the alleged scheme, the complaint said, the key Bitcoin exchange Kraken sided with Ver. The form of Bitcoin Cash that had been mined by UnitedCorp ended up being delisted from the Kraken exchange.

UnitedCorp claimed the purported scheme violated U.S. antitrust laws and a variety of Florida laws. The company also argued that the alleged conspiracy made a mockery of the crypto tenet of decentralization. “Making a centralized checkpoint that destroys the core principle of decentralized consensus was a significant and fundamental change to the blockchain,” the complaint said.

All of the defendants who were properly served with the complaint moved to dismiss the suit. I’ll home in on the motion filed by Bitcoin.com’s Ver, because his counsel Ian Simmons of O’Melveny & Myers took the lead for defendants at the Jan. 28 hearing before Judge McAliley. (O’Melveny also represents one of the developers that allegedly created a checkpoint to lock out UnitedCorp’s node. The Bitcoin exchange operator Kraken is represented by Kobre & Kim. The Chinese server defendants grouped under the name Bitmain have Jones Day.) Ver’s filing argued that UnitedCorp’s complaint is completely devoid of specific evidence that the defendants engaged in a conspiracy. There’s no assertion that they even communicated with one another about the “deeply implausible” scheme alleged by UnitedCorp, Ver said. The more plausible explanation for the success of the protocol they supported is that all of the entities named as defendants acted independently to assure the future of the Bitcoin Cash node they preferred. “This is what competition is about,” the brief said.

At the hearing before Judge McAliley, O’Melveny’s Simmons provided a metaphor for the Bitcoin Cash “hard fork.” He described a group of 100 pioneers trekking together until they come to a mountain. Twenty members of the group decide to try to dig their way through the mountain. The other 80 opt to go around. That’s what happened when Bitcoin Cash miners picked between the node favored by UnitedCorp and that preferred by Ver: They voted with their feet, and more picked to travel Ver’s route.

And according to Ver counsel Simmons, the ultimate evidence against UnitedCorp’s antitrust theory is that its Bitcoin Cash node is still operating. The currency isn’t listed on the Kraken exchange, but it’s still out there, Simmons said. “We now have more blockchains, more diversity in the marketplace than we had before,” he told the judge.

The O’Melveny lawyer specifically argued that UnitedCorp can’t show a per se violation of antitrust law because its allegations didn’t match case law on what constitutes overtly anticompetitive conduct, like price-fixing, market allocation or bid-rigging. UnitedCorp itself, he said, described its case as the first of its kind – the first attempt to police a cryptocurrency market for allegedly anticompetitive conduct. Almost by definition, Simmons said, a novel antitrust theory can’t be a per se violation.

Simmons said the complaint also failed to meet the criteria for showing an antitrust violation under the rule of reason. UnitedCorp, he said, didn’t plead a relevant product or geographic market, didn’t

allege that the defendants controlled a relevant market and didn't allege a restraint on competition. "They've alleged greater diversity in competition," he said. "They've alleged more voice, rather than less voice. There's not a diminution with the fork."

UnitedCorp counsel Brian Miller of Akerman harkened back to Simmons' pioneer analogy to explain why the alleged scheme was anticompetitive. What Simmons didn't mention, he said, was that one group of pioneers – like Ver and his alleged co-conspirators – brought in a squad of Chinese workers to help them blast through the mountain, and then set up a roadblock on the other side to block the pioneers who traveled a different route. With those two steps, Miller said, Ver and the other defendants boxed out competitors like UnitedCorp.

At the end of the hearing, Judge McAliley told UnitedCorp's lawyers that she "didn't see how" they could plead a per se violation of federal antitrust law, in part because the industry is too young to provide context for the suit's allegations and in part because they had not plausibly alleged that the defendants were acting in parallel. She also said she needed a better explanation of the relevant market and for why the rental of Chinese servers was anticompetitive. "I don't think you have facts that plausibly establish harm to competition," she said.

UnitedCorp CEO Laliberte said he and his lawyers are confident they can make their case in an amended complaint. He was encouraged, he said, by Judge McAliley's thorough preparation for the hearing and deep interest in the case – which is just what cryptocurrency needs. "This is the future of money," he said. "The decentralized environment is brilliant but you need laws ... We need a chance for the court system to set some rules."

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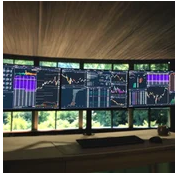
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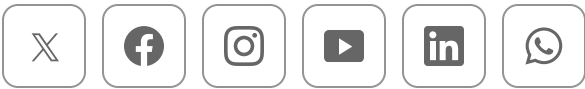
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